

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

1	R. JAMES CONSTRUCTION, INC.,)	
2)	
3	Appellant,)	PCHB No. 87-96
4)	
5	v.)	FINAL FINDINGS OF FACT,
6)	CONCLUSIONS OF LAW
7	OLYMPIC AIR POLLUTION CONTROL)	AND ORDER
8	AUTHORITY,)	
9)	
10	Respondent,)	
11)	
12)	
13)	

14 This matter, the appeal of a \$100 civil penalty (\$50 suspended)
15 for outdoor burning allegedly in violation of Section 9.01 of
16 respondent's Regulation I. came on for hearing before the Pollution
17 Control Hearings Board, Wick Dufford (presiding) and Judith A. Bendor,
18 convened at Lacey, Washington on November 24, 1987. Respondent
elected a formal hearing.

Appellant, R. James Construction, Inc., was represented by James
Femling, President. Respondent, Olympic Air Pollution Control
Authority (OAPCA) appeared through its attorney Fred D. Gentry. The
testimony was transcribed by court reporter Cheri L. Davidson.

1 Witnesses were sworn and testified. Exhibits were examined. From
2 testimony heard and exhibits examined, the Pollution Control Hearings
3 Board make these

4 FINDINGS OF FACT

5 I

6 Respondent OAPCA is a municipal corporation with the power to
7 implement and enforce a comprehensive program of air pollution
8 prevention and control in a multi-county area which includes Thurston
9 County and the site of the alleged violation.

10 OAPCA has filed with this Board a certified copy of its Regulation
11 I of which official notice is taken.

12 II

13 Appellant is a business operating in Thurston County. On May 21,
14 1987, an agent of the company was issued an Open Burning Permit
15 jointly by OAPCA and the Olympia Fire Department for burning at 2940
16 Limited Lane in Olympia, Washington.

17 The permit authorized open burning at the site from May 21 to June
18 21, 1987, subject to numerous conditions. Among these were the
19 following:

20 No material containing asphalt, petroleum products,
21 paint, rubber products, plastic, or any substance
22 which normally emits dense smoke or obnoxious odors
23 will be burned.

24 Person must be in attendance at all times.

III

On the morning of May 26, 1987, OAPCA's inspector received a complaint concerning ash fallout at the Harrison Park Apartments near the National Cable Television headquarters property which was the site of appellant's fire. Arriving at the site and inspecting the site between 10:00 and 10:15 a.m., the inspector observed plastic sheeting in the burning debris pile. He took photographs of the material to verify his observations.

When he arrived at the site, the inspector observed no one in attendance minding the fire. Ten or more minutes later appellant's president, Mr. Femling appeared on the scene.

The inspector issued a Notice of Violation (No. 1002-87) concerning the incident, describing two asserted permit violations: "No man in attendance" and Burning plastic."

IV

On June 1, 1987, OAPCA issued a Notice of Civil Penalty Assessment relating to the matters which were the subject of the inspector's Notice of Violation. The Notice assessed a fine of \$100, with \$50 of this amount being suspended. Under "Conditions," the Notice stated (in pertinent part): "FIRST VIOLATION: Fifty suspended dollars will be added to any future violation."

V

Appellant's fire was lighted early on the morning of May 26, 1987, and supervised by appellant's president Mr. Femling until it had burned down from its initial intensity. Then feeling the call of nature he left the fire unattended for 10 to 15 minutes.

He asked some workers at a nearby building to keep an eye on things while he was gone. They were, however, not in a position to see the fire. When Femling returned, the OAPCA inspector was on the scene.

VI

OAPCA's inspector did not see any plastic sheet actually burning. The sheets he saw were close to, but not in, the flames he photographed. Femling says he pulled out all the plastic material he could see before igniting the burn pile in an effort to avoid burning any plastic. However, he was not sure what was in the debris pile, which had been built by others.

On a consideration of all the evidence, we find it more likely than not that plastic material was burned.

VII

Appellant has no prior record of any open burning violation. Moreover, it has been cited with no further open burning infractions by OAPCA since the date in question.

VIII

Any Conclusion of Law which is deemed a Finding of Fact is adopted as such.

From these Findings the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I

OAPCA's Regulation I, Section 9.01 requires a permit for the commercial open burning being conducted in the instant case. Subsection (c) thereof provides for the imposition of conditions in such permits. Subsection (g) thereof prohibits in any fire (other than fire fighter training fires) the burning of

garbage, dead animals, petroleum products, paints, rubber products, plastics, or any substance which normally emits dense smoke or obnoxious odors...

II

Based on our findings we conclude that appellant violated Section 9.01(c) when he failed to observe the permit condition requiring a person to be in attendance at all times.

The reason for his absence, though recognized commonly as a matter of urgency, cannot excuse the violation. It would have been easy enough to provide someone to fill in. Leaving a fire unattended can lead to serious consequences. In any event, the Clean Air Act and Regulation I implement a strict liability scheme. Explanatory matters do not operate as excuses.

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FINAL FINDINGS OF FACT

CONCLUSIONS OF LAW & ORDER

(5)

1 III

2 We likewise conclude that appellant violated the prohibition
3 against the burning of plastics contained in Section 9.01(g).

4 IV

5 We recognize that this is appellant's first and only violation of
6 OAPCA's regulations to date. However, OAPCA has also recognized this
7 fact and tailored its penalty to the situation. In light of the
8 statutory maximum of \$2000 for the two violations alleged, RCW
9 70.94.431, we conclude that the penalty assessed here was entirely
10 reasonable.

11 I

12 Any Finding of Fact which is deemed a Conclusion of Law is adopted
13 as such.

14 From these conclusions the Pollution Control Hearings Board makes
15 this

ORDER

The \$100 civil penalty (\$50 suspended) which was appealed from is hereby affirmed.

DONE at Lacey, Washington this 12th day of January, 1988.

POLLUTION CONTROL HEARINGS BOARD

Wick Dufford

WICK DUFFORD, Presiding

Judith A. Bendor

JUDITH A. BENDOR, Member